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Letter dated 2 May 2012 from the Permanent Representative of the Sudan to the United Nations addressed to the President of the Security Council

Please find attached herewith the observations of the Government of the Sudan on the communiqué issued by the African Union Peace and Security Council on 24 April 2012 (see annex).

I would be grateful if the present letter and its annex were circulated as a document of the Security Council.

(*Signed*) Daffa-Alla Elhag Ali **Osman**
Permanent Representative

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Annex to the letter dated 2 May 2012 from the Permanent Representative of the Sudan to the United Nations addressed to the President of the Security Council

[Original: Arabic]

28 April 2012

Observations of the Government of the Sudan with regard to the decision adopted by the African Union Peace and Security Council concerning the situation between the Sudan and South Sudan and the involvement of the Security Council

1. The mandate of the African Union, a regional body charged with maintaining peace and security, is in harmony with the Charter of the United Nations and the role set out in Chapter VII thereof for regional arrangements and agencies. That mandate is also in keeping with the substance of the Constitutive Act of the African Union. From the time the African Union began its efforts to resolve the Sudan's internal disputes, including the protracted dispute in South Sudan prior to its secession in July 2011, the Sudan has attached great importance to Africa's role, which culminated in the conclusion of the Comprehensive Peace Agreement. The Abuja Agreement and the Doha Agreement, which are the last two instruments of the Darfur comprehensive settlement, were concluded thanks to the role played by and the leadership of the African Union and regional actors.

2. As we see it, the decision adopted by the African Union Peace and Security Council on 24 April 2012 underscores this role and stresses and reaffirms confidence in the work of the African Union High-Level Implementation Panel, the mechanism endorsed by the African Union to settle outstanding issues between the Republic of the Sudan and the Republic of South Sudan. We believe that the African Union would not hesitate to address this issue, particularly in view of its unblemished record in the recent history of the African continent.

3. In view of the foregoing, and in keeping with our national duty to consolidate the foundations of peace and our broader regional and international responsibility to contribute to the maintenance of international peace and security, we feel compelled to make the following observations regarding the decision adopted by the African Union Peace and Security Council:

(a) The decision stresses adherence to the principle of not resorting to force in order to achieve any political goal, no matter how legitimate. In practice, this means that, with regard to the dispute between the two countries, all support to and harbouring of armed groups must cease. Peace cannot be achieved unless this principle is respected fully. Although this principle is set out in paragraph 12 of the decision, it is not associated with any time frame, which is a very important requirement for its application. We note that all of the other requirements, without exception, are associated with specific and binding time frames, and that failure to respect those time frames will result in the imposition of sanctions. Some requirements must be fulfilled immediately, while others must be fulfilled in a time frame that does not exceed one or two weeks. In addition to implying disregard for the notions of equality, fairness and justice, we are certain that not associating the

cessation of support to or the harbouring of armed groups with a specific time frame will make this requirement meaningless and push it to the bottom of the list of requirements.

(b) Establishing the basis for peace and security between the two countries is a necessary condition that must be achieved before addressing other matters that will foster and deepen security and peace. Accordingly, the cessation of the constant attacks by South Sudan against the Sudan must be the highest regional priority. It is not appropriate to welcome the so-called withdrawal from Heglig by South Sudan without calling for accountability and a demand to cease threats of force, in accordance with the Charter of the United Nations, Article 2, paragraph 4. With each succeeding threat being greater than the next, we are now back to speaking of the occupation of Heglig, as the head of the South Sudan Government and all other South Sudan officials, without exception, have declared. Moreover, claims are once again being made that Heglig belongs to South Sudan. Those declarations and claims constitute an ongoing aggression and a threat thereof, and are contrary to the Charter of the United Nations, the Constitutive Act of the African Union and international law and custom. As for the related matter of the cessation of aerial bombardments, we are of the view that such bombardments are a legitimate act of self-defence. It would have been better to require both States to refrain from targeting civilians and civilian facilities, which enjoy international protection. Both can be attacked using any type of weapon, including the air force.

(c) The outstanding matters under dispute have been identified, set down in writing and agreed upon. They are not the claims being made by one the two parties. We strongly protest the reference in paragraph 13 (iii) to disputed and claimed border areas. Such claims contradict the principle of respecting the border established on 1 January 1956 and subsequent international confirmation thereof. They are also contrary to international law.

(d) Paragraph 18 of the decision concerning the joint and complementary responsibilities of the Security Council and the Peace and Security Council will create a conflict between the mandates of those esteemed councils. These two bodies cannot address the same question simultaneously. This, unfortunately, is what the Peace and Security Council is requesting in its decision when it calls on the Security Council to address this question under Chapter VII of the Charter. Such a request disregards the efforts being made by the Peace and Security Council itself to resolve the question and the time frames it has established.

(e) The direct cause of tensions along the countries' border are the repeated aggressions committed by the Sudan People's Liberation Army (SPLA), particularly its 9th and 10th Divisions. Its direct support for the so-called SPLA-North has resulted in the occupation of parts of Blue Nile and Southern Kordofan states, causing humanitarian suffering to which the entire world has been witness. Paragraph 16 effectively legitimizes the so-called SPLA-North, even as it continues to use arms and violence to achieve its political goals. This is unacceptable and will serve to encourage and provide an example to other armed groups in the continent. The call to negotiate with SPLA-North on the basis of the Framework Agreement referenced in paragraph 16, which the Sudanese Government has rejected, will not produce results that are conducive to regional peace and security, nor will it put an end to humanitarian suffering in the two countries.

(f) The decision does not address the concerns of the Sudan regarding the deliberate destruction of oil facilities and the substantial material damage caused by the forces of the South Sudan Government during their illegal occupation of the Heglig region. The Government of the Sudan trusts that the Council will shoulder its responsibilities in that regard by establishing a commission of enquiry to assess losses and by requiring the South Sudan Government to pay appropriate compensation.

(g) The Government of the Sudan believes that implementing the decisions set out in the road map requires the operationalization of the joint security mechanisms, which the South Sudan Government has consistently sought to delay. Doing so would make it possible to meet the deadlines set out in the decision and achieve positive results on the ground.